

THE HONORABLE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER J. HADNAGY, an  
individual; and SOCIAL-ENGINEER, LLC,  
a Pennsylvania limited liability company,

Plaintiffs,

v.

JEFF MOSS, an individual; DEF CON  
COMMUNICATIONS, INC., a Washington  
corporation; and DOES 1-10; and ROE  
ENTITIES 1-10, inclusive,

Defendants.

No. 2:23-cv-01932-BAT

REPLY TO PLAINTIFFS' MOTION FOR  
LEAVE TO FILE AMENDED  
COMPLAINT

WITHOUT ORAL ARGUMENT

**I. RELIEF REQUESTED**

Plaintiffs submit this reply brief in support of their motion to amend the complaint, requesting the Court to grant leave to amend under Rule 15(a)(2) of the Federal Rules of Civil Procedure. The proposed amendment is straightforward and should be liberally granted. Plaintiffs seek to add a cause of action for false light, which is premised on the same facts as the existing defamation claim and includes all the same elements. Nothing more. Despite the simplicity and timeliness of this amendment, opposing counsel has gone to great lengths to draft a lengthy and convoluted argument against it. Notably, when Plaintiffs initially sought a stipulation regarding the amendment, Defendants were willing to stipulate, but expressed

REPLY TO PLAINTIFFS' MOTION FOR LEAVE  
TO FILE AMENDED COMPLAINT - 1

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1 concern with the inclusion of factual background allegations which they say related to dismissed  
 2 claims. *See* Supplemental Conrad Declaration, Ex. A. Defendants never raised any concerns that  
 3 the amendment was untimely, prejudicial, futile, or made in bad faith.

4 Therefore, Plaintiffs request that this Court grant this simple, justified amendment, which  
 5 is well within the scheduling order, to ensure all relevant claims are adjudicated.

## 6 **I. EVIDENCE REPLIED UPON**

7 This reply is based upon the Supplemental Declaration of Mark Conrad (“Conrad Decl.”),  
 8 with exhibits thereto, and upon the records and papers herein.

## 9 **II. ARGUMENT AND AUTHORITY**

### 10 **1. The Amendment Is Simple, Within The Deadlines Set By This Court, And Should 11 Be Liberally Granted.**

12 The proposed amendment is straightforward: it adds an additional cause of action for  
 13 false light based on the same facts underlying the defamation claim and removes the causes of  
 14 action dismissed by this Court. The false light claim shares the same elements as defamation,  
 15 making it a logical and uncomplicated addition to the complaint. The amendment does not  
 16 introduce new facts or complicated legal theories but merely seeks to ensure all relevant claims  
 17 are presented for adjudication in light of this Court’s ruling that Washington law applies.

18 Defendants’ response incorrectly asserts that Plaintiffs are seeking to add two causes of  
 19 action—false light and defamation by implication—that Defendants will be prejudiced because  
 20 they will be forced to file another dismissal motion on these additional causes of action, and that  
 21 Plaintiffs unduly delayed bringing the amendment in bad faith.

22 As an initial matter, defamation by implication is not an independent cause of action but  
 23 rather a theory of defamation. Indeed, this Court specifically discussed defamation by  
 24 implication and the supporting facts when denying Defendants’ prior motion to dismiss. Dkt. 44,

pg. 12-13. As the Washington Supreme Court recognized, “[w]hile all false light cases need not be defamation cases, all defamation cases are potentially false light cases.” *Eastwood v. Cascade Broad. Co.*, 106 Wash. 2d 466, 471, 722 P.2d 1295, 1297 (1986). Thus, it is illogical for Defendants to argue prejudice based on the threat of another motion to dismiss when this Court has already ruled on the defamation claim, which is necessarily dispositive to a claim for false light. Adding this claim is neither prejudicial nor futile.

Additionally, Plaintiffs’ amendment is timely. The Court’s Order dated March 28, 2024, provided Plaintiffs an opportunity to amend the complaint by April 22, 2024, to add more specificity to their claims of Defamation (“Injurious Falsehoods” by Defendant Moss), Tortious Interference with Contractual Relations, and Prospective Business Relations. This did not alter this Court’s scheduling order deadline of June 28, 2024, to amend the pleadings as to claims not subject of the motion and not yet before the Court. *See* Court Order Setting Trial Date and Pretrial Schedule, Dkt. 25, filed March 29, 2024. This scheduling order was set in place to ensure the orderly and timely handling of this case, including any amendment of the pleadings. It is nonsensical to suggest that Plaintiffs unduly delayed bringing this claim or that Defendants are prejudiced when Plaintiffs complied with the deadline set forth by the court. Furthermore, there is ample time for discovery, no depositions have taken place, and the parties have just begun exchanging discovery. There is no undue delay or prejudice. Defendants’ attempt to twist this Court’s order by creating a new deadline to amend the pleadings is an unreasonable tactic that should not go unnoticed.

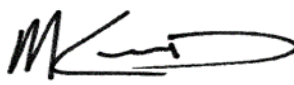
Lastly, this motion to amend was not brought in bad faith, as Defendants suggest. Defendants once again misinterpret this Court’s order to suggest that Defendant Moss is no longer a defendant. In light of the Court’s ruling, and although not necessarily required,

Plaintiffs' proposed amendment struck all causes of action dismissed by the Court Order, leaving only the factual background information related to Plaintiffs' remaining defamation claims. Plaintiffs did not interpret the order as an outright dismissal of Defendant Jeff Moss concerning his publicizing of the 2/9/22 Transparency Report and the 1/13/23 Update in his personal capacity. *See* Supplemental Conrad Declaration Ex. B. Instead, the Court stated, "Plaintiffs have sufficiently stated claims of defamation based on **Defendants'** publications of the 2/9/22 Transparency Report and the 1/13/23 Update on Def Con's website." Dkt. 44, dated March 28, 2024, pg. 12 (emphasis added). Regardless, the factual background does not create a new cause of action or supersede this Court's ruling. There is no bad faith, and Plaintiffs request that this Court grant the motion.

As required by Local Civil Rule 7(e)(6), I certify that Plaintiffs' for Leave to File Amended Complaint contains 863 words, excluding the parts that are exempt by Local Civil Rule 7(e)(6).

DATED this 22nd day of July 2024.

FREY BUCK, P.S.

By:   
 Ted Buck, WSBA #22029  
 Mark Conrad, WSBA # 48135  
 Attorneys for Plaintiffs

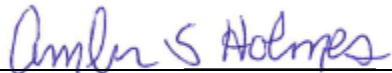
**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **REPLY TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** on the following individuals:

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DATED this 22nd day of July 2024 at Seattle, Washington.

  
Amber Holmes, Legal Assistant